IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev. No.1498 of 2005
Date of Decision: 10.03.2011

Ramesh Kumar ...Petitioner

Vs.

State of Punjab . ...Respondent

BEFORE: HON'BLE MR.JUSTICE GURDEV SINGH

Present: Mr.K.S.Dhaliwal, Advocate,
for the petitioner.

Ms.Gaggan Mohini, AAG., Punjab.

1.Whether Reporters of local papers may be allowed to see the judgment?
2.Whether to be referred to the Reporters or not?
3.whether the judgment should be reported in the Digest.

Gurdev Singh, J. (Oral)

Petitioner/accused, Ramesh Kumar, has preferred this revision against the judgment dated 12.07.2005 passed by learned Additional Sessions Judge (Ad-hoc), Hoshiarpur, vide which he dismissed the appeal preferred by the accused against the judgment dated 11.12.2003 passed by the learned Judicial Magistrate First Class, Dasua, vide which he was convicted for the offences under sections 279 and 304-A IPC and was sentenced as under:

a)	U/s 279 IPC	To undergo R.I. for 6 months.
b)	U/s 304-A IPC	To undergo R.I. for two years and to pay fine of Rs.2000/- and in default of payment of fine to undergo simple imprisonment for two months.

The prosecution case in brief is that on 30.06.2001 Jagir Singh complainant PW 2 along with his brother Bakshish Singh and their nephew Rajinder Singh, was going from village Kala Manj towards their house situated in Daggan Colony Mukerian, District Hoshiarpur. Rajinder Singh was going ahead of them at a distance of about 15 karams on his bicycle. When at about 6 PM they were going on the GT Road at some distance from Dashmesh Colony, accused came driving Canter No.HR-01-A-2271 from the side of Pathankot at a very fast speed, and after passing by their side ran over Rajinder Kumar, who was going on his left hand side of the road. Rajinder Kumar died at the spot itself. After leaving the Canter at the spot accused escaped. On receipt of information regarding this accident Resham Singh ASI PW 7 accompanied by other police officials, came to the spot where the complainant made his statement Ex.PB before him about this accident. After making his endorsement Ex.PH upon the same, he sent that to the Police Station, on the basis of which formal FIR Ex.PJ was recorded against the accused under sections 279 and 304-A of the Indian Penal Code. ASI inspected the spot and prepared rough site plan Ex.PM with correct marginal notes. He called Om Dutt Sharma Photographer PW 5 to the spot,

who took the photographs Ex.P.1 to Ex.P.5. He prepared the inquest report Ex.PC in respect of the dead body of the deceased and sent the same to Civil Hospital, Dasuya for post mortem examination. Autopsy on the dead body was performed by Dr.Parmodh Rishi PW 1, who found ante mortem injuries on the same and gave his opinion that cause of death was extensive damage to the brain, which was sufficient to cause death in the ordinary course of nature. The bicycle of the deceased was taken into possession vide memo Ex.PD whereas Canter was taken into possession vide memo Ex.PE. On 1.07.2001 Canter was mechanically tested by Gurdas Singh constable Mechanic PW 5, who found the same to be in mechanical order and gave his report Ex.PG. On 1.07.2001 Satinder Singh, owner of Canter, produced the documents thereof and the driving license of the accused before the ASI and those were taken into possession vide memo Ex.PM. In the course of investigation accused was arrested and after completion thereof, challan was put in before Judicial Magistrate First Class, who found sufficient grounds for presuming that the accused committed offences punishable under sections 279 and 304-A IPC. He was charged accordingly, to which he pleaded not guilty and claimed trial.

To prove the guilt of the accused prosecution examined Dr.Parmodh Rishi PW1, Jagir Singh complainant PW 2,Bakshish Singh PW 3, Tarsem Lal PW 4, Om Dutt Sharma PW 5, Gurdas Singh PW 6, Resham Singh ASI PW 7.

After the prosecution closed its evidence, the accused was examined by the learned trial court and his statement was recorded under

Section 313 Cr.PC. Incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded his false implication. He pleaded that Canter was already lying parked at the spot and he was not present in the same when the alleged accident took place. He was called upon to enter upon his defence but he did not produce any evidence in his defence.

I have heard learned counsel for both sides.

Learned counsel for the accused/petitioner did not assail the findings of the conviction recorded by the learned trial court and upheld by the learned appellate court. He confined his submissions to the quantum of sentence. He submitted that the accident took place on G.T. Road which is a very busy road and there was contributory negligence on the part of the complainant and his brother Bakshish Singh in allowing deceased to come on the road on his bicycle, keeping in view his tender age. In view of these facts the accused is entitled to the benefit of reduction in the sentence and he is ready to compensate the legal heirs of the deceased.

This prayer of the learned counsel has been opposed by the learned State Counsel, who contended that it is not a case where the complainant or his brother or the deceased could be held liable for contributory negligence.

There is no prohibition of paddling the bicycle on a busy road or G.T.Road, provided the bicyclist observes the rule of the road. It is not a case where the deceased had come on the main road from the link road

before the accident. He was already proceeding on G.T.Road itself on his left hand side. It is not disputed that at the time of accident he was 13/14 years old. Thus, it can not be said that he was of such a tender age that he could not have controlled the bicycle on the main busy road. There is nothing on record for concluding that the deceased or his companions were negligent in any manner.

However, keeping in view that the accused is standing his trial since long and an offer has been made for compensating the legal heirs of the deceased, I am of the opinion that he is entitled to some concession in reduction of the sentence of imprisonment so imposed upon him. Therefore, the sentence of imprisonment of two years imposed upon him under section 304-A IPC is reduced to one year and he is directed to pay a compensation of Rs.50,000/- to the parents of the deceased. That amount be deposited/paid in the trial court within 3 months of the passing of this order and incase of non-payment thereof this revision shall be deemed to have been dismissed.

Disposed of in above terms.

Records of the lower court be returned forthwith.

(Gurdev Singh)
Judge

10.03.2011
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